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No._____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2000

JEROME ZAMOS,

Petitioner

vs.

PATRICIA KAY ZAMOS,

Respondent

On a Writ of Certiorari to
The Court of Appeal of the State of California
for the Second Appellate District, Division One
and
The Superior Court of the State of California
for the County of San Diego

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This petition raises questions of fundamental fairness , equal protection under state law and due process under section one of the Fourteenth Amendment to the Constitution of the United States of America in a proceeding commenced by a former spouse against PETITIONER years after he had legally disposed of his records of performance in the good belief that his obligations under a decree dissolving the marriage entered nineteen (19) years earlier had been satisfied.

UNRESOLVED ISSUE OF FIRST IMPRESSION

IS THE COURT'S REASONING IN *National Union v. Arnold* 348 U.S. 37, 75 S.Ct. 92, 99 L.Ed. 46 (1954) APPLICABLE TO "*NATURAL PERSONS*" WHOSE ASSETS ARE PROTECTED AGAINST EXECUTION BY JUDGMENT CREDITORS BY VIRTUE OF EXEMPTIONS CREATED UNDER EITHER STATE OR FEDERAL LAW

The specific issues raised by this PETITION under section one of the Fourteenth Amendment to the Constitution of the United States of America are:

I.

Can a state appellate court [without violating the equal protection clause of the Fourteenth Amendment] enforce the terms of an order directing an APPELLANT to pay money to his or her adversary's counsel without affording the APPELLANT all of the rights afforded to all other money judgment debtors under state law?

II.

Can a state appellate court [without violating the equal protection clause of the Fourteenth Amendment] deny an APPELLANT who has fully complied with all of the published provisions of state law which prescribe the manner in which an appeal may be taken, the benefits of appellate review under state law, based solely upon his or her inability to satisfy an order directing him to pay money to his adversary or his adversary's attorney ?

III

Can a state court [without violating the due process clause of the Fourteenth Amendment] deny a litigant the benefit of a defense based upon his or her inability to produce documentary evidence which he or she had a right [under state law] to dispose of because of the passage of time?

CONSTITUTIONAL AND STATUTORY PROVISIONS[1]

The issues discussed in this PETITION arise under the following laws, statutes, and constitutional provisions:

THE CONSTITUTION OF THE UNITED STATES OF AMERICA

Section 1 of the Fourteenth Amendment to the Constitution of the United States of America

CALIFORNIA CODES & STATUTES

California Code of Civil Procedure

§§ 680.010 through 724.260 inclusive

§§ 901 et seq.

California Government Code § 68926

This petition also requires the Court's reexamination of its earlier decision in:

National Union* v. *Arnold
348 U.S. 37, 75 S.Ct. 92, 99 L.Ed. 46 (1954)

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1. **The constitutional and statutory provisions referred to in this PETITION are set out in full in APPENDIX "S" at APP 107 -118 inclusive.**

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IN THE SUPREME COURT OF
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October Term, 2000

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Respondent[2]

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2. All parties to these proceedings are listed in the caption of the case as required under Rule 24 1.(b) of the Rules of the Supreme Court of the United States. When the term "RESPONDENT" is used in the body of the PETITION the term refers to PETITIONER JEROME ZAMOS' former spouse PATRICIA KAY ZAMOS.

PETITION FOR WRIT OF CERTIORARI

COMES NOW PETITIONER JEROME ZAMOS [hereinafter "PETITIONER"] and prays that a Writ of Certiorari be issued pursuant to Rule 10(c) of the Rules of the Supreme Court of the United States to the California Court of Appeal for the Fourth Appellate District, Division 1 [hereinafter "THE CALIFORNIA COURT OF APPEAL"] and the Superior Court of the State of California for the County of San Diego [hereinafter "THE CALIFORNIA FAMILY LAW COURT"] reviewing their orders:

(1) Entered in THE CALIFORNIA COURT OF APPEAL on February 21, 2001 [APPENDIX "A" APP. 1 through 2 inclusive hereinafter "THE DISMISSAL ORDER"] dismissing PETITIONER'S fully perfected appeal from the order/judgment entered in THE CALIFORNIA FAMILY LAW COURT on June 27, 2000 [APPENDIX "B" APP. 3 through 7 inclusive which is hereinafter referred to as "THE JUNE 2000 ENFORCEMENT ORDER"] based solely and exclusively upon PETITIONER'S alleged default under the terms of an order directing the payment of money contained in an order entered in THE CALIFORNIA FAMILY LAW COURT entered on December 14, 2000 [APPENDIX "E" at APP 10 through APP 12 which is hereinafter referred to as "THE APPELLATE FEE ORDER"]; and

(2) THE JUNE 2000 ENFORCEMENT ORDER entered in THE CALIFORNIA FAMILY LAW COURT on June 27, 2000 [APPENDIX "B" APP 3-7 inclusive] which is based upon an alleged default under the provisions of an interlocutory Decree of Dissolution entered on April 26, 1982 in the Superior Court of the State of California for the County of Santa Barbara [APPENDIX "F" at APP 13 through 15 inclusive which is hereinafter referred to as "THE 1982 DISSOLUTION DECREE"].

PETITIONER'S EXHAUSTION OF HIS STATE COURT REMEDIES WHICH SUPPORT THIS COURT'S JURISDICTION UNDER 28 U.S.C. § 1257 (a)

On July 19, 2000 PETITIONER filed a notice of Appeal [APPENDIX "D" at APP 9] pursuant to Code of Civil Procedure §§ 901 and 902 and paid all fees required under the laws and statutes of the State of California Government Code § 68926 and Rules 1 and 2 of the California Rules of Court] to perfect an appeal from THE JUNE 2000 ENFORCEMENT ORDER under the laws enacted by the legislature of the State of California and the state's judicial council.

On October 10, 2000 [in accordance with the provisions of Rule 16(a) of the California Rules of Court] PETITIONER filed his opening brief [APPENDIX "J" APP 21 through APP 38 inclusive and hereinafter referred to as "PETITIONER'S OPENING BRIEF"] in which he raised [among other issues] his claim that he had been denied both due process and equal protection of law in the process initiated by RESPONDENT in THE CALIFORNIA FAMILY LAW COURT on March 23, 2000 [APPENDIX "H" at APP 17] which led up to the entry of THE JUNE 2000 ENFORCEMENT ORDER over eight (8) years after PETITIONER made what he believed was his last payment under the provisions of THE 1982 DISSOLUTION DECREE [see ¶ 29 of APPENDIX "I" at page 20].

On February 21, 2001 [despite the limited provisions of California law (Rule 19 of the California Rules of Court) for the dismissal of a fully perfected appeal] THE CALIFORNIA COURT OF APPEAL issued THE DISMISSAL order which dismissed PETITIONER'S appeal from THE JUNE 2000 ENFORCEMENT ORDER without making any determination of whether the process leading up to its entry violated PETITIONER'S rights under section one of the Fourteenth Amendment to the Constitution of the United States of America based solely upon PETITIONER'S failure to satisfy the monetary terms of THE APPELLATE FEE ORDER.

Thereafter on May 16, 2001 [again without addressing either the due process or equal protection issues raised in PETITIONER'S OPENING BRIEF or the PETITION FOR REVIEW OR IN THE ALTERNATIVE REQUEST FOR ORDER REINSTATING APPEAL AND TRANSFERRING IT TO A DIFFERENT APPELLATE PANEL [APPENDIX "Q" APP 90 through APP 104 inclusive hereinafter referred to as "THE PETITION FOR REVIEW"] of the California Supreme Court denied PETITIONER'S request for relief [APPENDIX "C" at APP. 8].

Based upon the California Supreme Court's denial of review on May 16, 2001 [APPENDIX "C" at APP 8] PETITIONER has no further remedies under California law to obtain relief from the orders entered by either THE CALIFORNIA FAMILY LAW COURT

or THE CALIFORNIA COURT OF APPEAL which have denied him the full protection of California law in violation of the due process and equal protection found in section one clause one of the Fourteenth Amendment to the Constitution of the United States of America [3].

Based upon the foregoing as of this date PETITIONER has exhausted his remedies in the state courts of California and is entitled to invoke this Court's jurisdiction under 28 U.S.C. § 1257(a).

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3. Although the sole purpose of THE APPELLATE FEE ORDER was issue to provide funds for RESPONDENT'S response to the appeal, within two [2] days after denial of Review of THE DISMISSAL ORDER, RESPONDENT commenced a new proceeding in THE CALIFORNIA FAMILY LAW COURT claiming the right to execute against PETITIONER'S exempt assets. RESPONDENT'S current claims in the post dismissal proceedings in THE CALIFORNIA FAMILY LAW COURT are still based upon the non payment of the *full* amount of THE ATTORNEY FEE ORDER [see APPENDIX "R" at APP. 105 through APP 106 Inclusive] despite the fact that she has to date never filed any response to the appeal which PETITIONER has now been denied.

JURISDICTIONAL BASIS FOR PETITION

This petition has been brought to review the decisions of the State Courts of California which PETITIONER alleges have violated his rights under section one of the Fourteenth Amendment to the Constitution of the United States of America which prohibits a state from making or enforcing:

> **. . .[A]ny law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; *nor deny to any person within its jurisdiction the equal protection of the laws.* [emphasis added].**

This Petition is filed on the grounds that in dismissing the appeal from THE JUNE 2000 ENFORCEMENT ORDER [which had been fully perfected in full compliance with all existing provisions of California Law] THE CALIFORNIA COURT OF APPEAL denied PETITIONER the full protection of state law against the effects of an order which had been entered against him through a procedure in which THE CALIFORNIA FAMILY LAW COURT denied him a reasonable opportunity to defend himself in violation of the due process clause of the Fourteenth Amendment to the Constitution of the United States of America.

Because the California Supreme Court has now denied PETITIONER'S PETITION FOR REVIEW or in the alternative ordered THE CALIFORNIA COURT OF APPEAL to reinstate his appeal from THE JUNE 2000 ENFORCEMENT ORDER the two state-court orders which are the subject matter of this PETITION are final under state law and no longer subject to further review or correction in state tribunal.

Based upon the foregoing this Court has jurisdiction under 28 U.S.C. § 1257 (a) to review the two orders of the state courts of California which are the subject matter of this PETITION.

This Court has never addressed the equal protection issues raised by the dismissal of a fully perfected appeal based solely upon a "*natural person's*" failure to respond to a money judgment. Because the enforcement of money judgments against "*natural persons*" in California [as is true in most states] is subject to the state's enforcement of judgment act [see California Code of Civil Procedure § 703.070 (a)] which provides for non-waivable rights [see California Code of Civil Procedure § 703.040] by a "*natural person*" to claim exemptions [see California Code of Civil Procedure § 703.010 (a)], the enforcement of a money judgment through the dismissal of PETITIONER'S fully perfected appeal [without affording him the benefit of those rights] raises unresolved constitutional issues which warrant the exercise of this Court's jurisdiction under Rule 10(c) of the Rules of The Supreme Court of the United States of America].

THE RIGHTS PETITIONER WAS DENIED IN VIOLATION OF SECTION ONE OF THE FOURTEENTH AMENDMENT

Section One of the Fourteenth Amendment to the Constitution of the United States of America provides in part:

> **No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; *nor deny to any person within its jurisdiction the equal protection of the laws* (emphasis added).**

California's legislature provided in California Code of Civil Procedure § 901 provides that the state's Judicial Council had the authority to prescribe rules for the practice and procedure on appeal. That power was not conferred upon the state's courts.

PETITIONER complied with all of the rules prescribed by the Legislature and Judicial Council of the State of California to perfect his appeal from THE JUNE 2000 ENFORCEMENT ORDER but was denied his statutory right under California law to an appeal [which had been fully briefed] by the state's judiciary. There is no provision under California law which confers jurisdiction upon its judiciary to impose additional conditions upon a litigant's appellate rights, or authorizes the states court's to enforce orders directing

the payment of money without compliance with the state's enforcement of judgments act [California Code of Civil Procedure §§ 680.010 through 724.260 inclusive].

California Code of Civil Procedure § 902 provides that any party aggrieved by an order entered in one of the state's trial courts has *the right* to appeal from such an order in the manner prescribed by the legislature and the state's judicial council. PETITIONER fully complied with all of the rules prescribed by the California Legislature and state's Judicial Council for pursuing an appeal from THE JUNE 2000 ENFORCEMENT ORDER. However, despite PETITIONER'S full compliance with the statutes and rules enacted by the California Legislature and the state's Judicial Council he was denied his statutory right to an appeal by CALIFORNIA COURT OF APPEAL based solely on his inability to pay his adversary the sum of SEVEN THOUSAND FIVE HUNDRED DOLLARS ($7,500.00) under the provisions of THE APPELLATE FEE ORDER.

California Government Code § 68926 provides that the fee for filing a notice of appeal in a civil case appealed to a court of appeal is two hundred sixty-five dollars ($265) [see APPENDIX "S" APP. 111]. That section *also* provides that the statutory fee is for *all services, through the rendering of the judgment or the issuing of the remittitur* [emphasis added].

PETITIONER paid the fee prescribed by California Government Code § 68926 but was denied the services covered by that section because he failed to pay an additional SEVEN THOUSAND FIVE HUNDRED DOLLARS ($7,500.00) fee to his adversary pursuant to THE APPELLATE FEE ORDER].

There is no statutory provision in California law which relieves its appellate courts of their mandatory obligations to appellants upon the payment of the fee specified in Government Code § 68926.

California's Enforcement of Judgment Law provides that money judgments entered in the state are enforceable under the provisions of that law [California Code of Civil Procedure § 681.010]. The provision of THE APPELLATE FEE ORDER which required PETITIONER to pay RESPONDENT the sum of SEVEN THOUSAND FIVE HUNDRED DOLLARS ($7,500.00) falls within the definition of "a money judgment" in California's Enforcement of Judgment Law [California Code of Civil Procedure § 680.270].

The procedure adopted by THE CALIFORNIA COURT OF APPEAL in dismissing PETITIONER'S fully perfected appeal and the California Supreme Court in failing to reinstate it [based exclusively upon PETITIONER'S failure to satisfy THE APPELLATE FEE ORDER violated PETITIONER'S rights under section one of the Fourteenth Amendment to the Constitution of the United States to enjoy the full protection of the California Enforcement of Judgment

Act found in California Code of Civil Procedure §§ 695.040, 703.010 (a), 703.020 (b) and § 703.070 (a).

Under Rule 19(a) of the California Rules of Court once an Appellant has caused his opening brief to be filed in accordance with the rules adopted by the California Judicial Council there is no provision under any statute enacted by the state's legislature or rule adopted by the state's JUDICIAL COUNCIL that authorizes any of the state's appellate courts to dismiss an appeal without a decision on the merits which determines the cause [see Article VI § 14 of the Constitution of the State of California].

Despite the limited authority of California's appellate courts to dismiss appeals under the rules adopted by the state's legislature and judicial council, THE DISMISSAL ORDER denied PETITIONER the full privilege of an adversary under California Code of Civil Procedure § 902 to a full appeal in violation of his equal protection rights under section one of the Fourteenth Amendment to the Constitution of the United States of America.

FACTUAL BACKGROUND OF PETITIONER'S STATE COURT APPEAL

In April of 1992 PETITIONER made what he believed was his last support payment to RESPONDENT under THE 1982 DISSOLUTION DECREE [see ¶ 29 of APPENDIX "I" at page APP -20]

Because of the passage of time, however, much of the documentation that would have supported PETITIONER'S defenses was either destroyed in the Northridge Earthquake which occurred in January of 1994 or disposed of four (4) years later in 1998 [see ¶ 27 of APPENDIX "I" at page APP 19]. Thus, when PETITIONER was confronted with the unexpected initiation of proceedings by RESPONDENT in March of 2000 he found himself at a serious disadvantage, particularly when confronted by a less than hospitable reception in the CALIFORNIA FAMILY LAW COURT, which totally rejected even the meager records he was able to produce in response to RESPONDENT'S demands [see THE JUNE 2000 ENFORCEMENT ORDER APPENDIX "B" at APP-6].

FACTUAL BACKGROUND OF ORDER DISMISSING PETITIONER'S APPEAL FROM THE JUNE 2000 ENFORCEMENT ORDER WITHOUT A DECISION ON THE MERITS

The factual basis for the dismissal of PETITIONER'S appeal from THE JUNE 2000 ENFORCEMENT ORDER is summarized in the introduction found in the first paragraph of THE DISMISSAL ORDER entered on February 21, 2001. The facts set forth below are taken from the recitation in THE DISMISSAL ORDER.

On July 19, 2000 PETITIONER filed a notice of appeal [APPENDIX "D" APP 9] seeking review of THE JUNE 2000 ENFORCEMENT ORDER. PETITIONER'S APPEAL BRIEF was filed on October 10, 2000. In his opening brief PETITIONER argued, among other things, that RESPONDENT'S eight year (8) delay in commencing enforcement proceedings effectively denied him full due process because of his lawful disposal of records in 1998 which he was under no legal obligation to preserve [see APPENDIX "J" at pages APP-34 through 38 inclusive.]

On December 14, 2000, THE CALIFORNIA FAMILY COURT [after a hearing reflected in the transcript excerpts filed as APPENDIX "K" APP 39 through APP 59 inclusive] entered THE APPELLATE FEE ORDER which ordered PETITIONER to pay RESPONDENT SEVEN THOUSAND FIVE HUNDRED DOLLARS $7,500 forthwith for her fees and costs to respond to

PETITIONER's appeal.

THE APPELLATE FEE ORDER [APPENDIX "E" at APP-10]]was made despite the fact that the bench officer presiding over the December 7, 2000 hearing [who also ordered the final termination of the ongoing support penalty set forth in THE JUNE 2000 ENFORCEMENT ORDER (see APPENDIX "L" at APP 60 through APP 62 inclusive)] indicated that he believed PETITIONER had "a reasonable chance of success" on the appeal [see APPENDIX "K" at page APP 58 through APP 59][4]

On December20, 2000 RESPONDENT moved to stay PETITIONER'S appeal from THE JUNE 2000 ENFORCEMENT ORDER [APPENDIX "M" at APP 63 through APP 67 inclusive] until PETITIONER paid $7,500 to RESPONDENT under the provisions of THE APPELLATE FEE ORDER. On January 8, 2001 PETITIONER filed his opposition to the request for stay of the appeal [APPENDIX "N" APP 68 through 71 inclusive].

On January 8, 2001 THE CALIFORNIA COURT OF APPEAL issued an order staying PETITIONER'S appeal from THE JUNE 2000 ENFORCEMENT ORDER for thirty (30) days [APPENDIX "O" at APP

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4. A separate appeal is currently pending from THE APPELLATE FEE ORDER, although RESPONDENT is also attempting to have it dismissed without a determination of the issues].

72 hereinafter referred to as "THE JANUARY 2000 STAY ORDER"]. THE CALIFORNIA COURT OF APPEAL *sua sponte* included the following admonition in "THE JANUARY 2000 STAY ORDER":

> On or before February 7, 2001, [PETITIONER] is directed to provide the court with proof of payment of $7,500, to respondent for attorney fees or with a *showing* of why the appeal should not be dismissed [5].

On February 6, 2001 PETITIONER filed his response to THE JANUARY 2000 STAY ORDER and formally requested oral arguments and a written opinion pursuant to Article VI § 14 of the Constitution of the State of California and Rule 21(a) of the California Rules of Court and requested that the stay be vacated and the briefing schedule be reinstated without

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5. California Government Code §68926 provides that the fee for "for filing a notice of appeal in a civil case appealed to a court of appeal is TWO HUNDRED SIXTY-FIVE DOLLARS ($265)". That same section also provides that the "TWO HUNDRED SIXTY-FIVE DOLLARS ($265)" filing fee is to cover "all services, through the rendering of the judgment or the issuing of the remittitur or peremptory writ, except the fee imposed by Section 68927 [the fee for obtaining review by The California Supreme Court]". There is no provision in any California Statute which authorizes any California Court to impose any additional fees as a condition precedent for obtaining a decision on the merits [consistent with the provisions of Article VI § 14 of the Constitution of the State of California] following compliance with the conditions set forth in California Code of Civil Procedure §§ 901 et seq.

reference to the issue involving the payment of the $7,500 to RESPONDENT [APPENDIX "P" at APP 73 through APP 88 inclusive]. In addition to other objections contained in his response to THE JANUARY 2000 STAY ORDER, paragraph (c) through (f) inclusive at APP 75 through APP 76 specifically objected to any procedure which denied him the "non-waivable" rights under California's Enforcement of Judgments Act [California Code of Civil Procedure §§ 680.010 through 724.260 inclusive] in connection with any attempt to enforce the monetary provisions of THE APPELLATE FEE ORDER.

On February 21, 2001 the CALIFORNIA COURT OF APPEAL entered THE DISMISSAL ORDER without complying with the mandatory provisions of California's Enforcement of Judgments Act [California Code of Civil Procedure §§ 680.010 through 724.260 inclusive] and dismissed PETITIONER'S fully perfected appeal from THE JUNE 2000 ENFORCEMENT ORDER. THE DISMISSAL ORDER was entered solely as a result of PETITIONER'S failure to pay RESPONDENT the $7,500.00 in accordance with the provisions of THE APPELLATE FEE ORDER.

The CALIFORNIA COURT OF APPEAL did not include in THE DISMISSAL ORDER an opinion on the merits of PETITIONER'S perfected appeal or any provision which would have allowed the appeal to proceed with either further briefing or oral arguments in the manner provided in Rules 16 (a), 17 (b) and 21(a) of the California Rules of Court.

PETITIONER, claiming that the dismissal of his appeal without a decision on the merits deprived him of his privileges under the constitution and statutes of the State of California and his right to equal protection under section one of the Fourteenth Amendment of the

Constitution of the United States of America, filed a PETITION FOR REVIEW of THE DISMISSAL ORDER with the California Supreme Court [APPENDIX "Q" at APP 90 through APP 104 inclusive] in which he again raised his concerns with the denial of his rights under the mandatory provisions of California's Enforcement of Judgments Act [California Code of Civil Procedure §§ 680.010 through 724.260 inclusive] and section one of the Fourteenth Amendment to the Constitution of the United States of America [see ¶ (d) at APP 239].

On May16, 2001 The California Supreme Court [without any decision having been made on the merits of PETITIONER'S APPEAL as required under the provisions of Article VI § 14 of the Constitution of the State of California] denied PETITIONER'S request [APPENDIX "C" at APP 8] leaving him with no further right to have THE JUNE 2000 ENFORCEMENT ORDER reviewed in the manner referred to under California Code of Civil Procedure §§ 901 et seq.].

Even though PETITIONER was denied his appellate rights under California Code of Civil Procedure § 902 RESPONDENT initiated a new proceeding in THE CALIFORNIA FAMILY COURT on May 18, 2001 [APPENDIX "R" at APP 105 through APP 106 inclusive] in which she still seeks to enforce both monetary provisions of THE JUNE 2000 ENFORCEMENT ORDER and THE APPELLATE FEE ORDER [the non payment of which led to THE DISMISSAL ORDER]. Thus, under RESPONDENT'S post dismissal theory, not only is PETITIONER denied all of the services to which he was entitled upon payment of the fee prescribed under Government Code § 68926, he is also expected to pay RESPONDENT for the services of her counsel that were never rendered.

PRIOR DECISIONS OF THIS COURT DEALING WITH THE DISMISSAL OF APPEALS BY STATE COURTS BASED UPON NON SATISFACTION OF MONEY JUDGMENTS

This Court has previously examined the issues that arises when an appellate court dismisses an appeal following an appellant's failure to either satisfy the judgment appealed from or post a *supersedeas* bond in National Union v. Arnold 348 U.S. 37, 75 S.Ct. 92, 99 L.Ed. 46 (1954) [hereinafter referred to as "THE NATIONAL UNION CASE"]. The present petition, however, raises issues of first impression which were not raised in THE NATIONAL UNION CASE and is therefore subject to review under Rule 10(c) of the Rules of the Supreme Court of the United States.

THE NATIONAL UNION CASE is distinguishable from the issues raised in this petition for the following critical reasons:

(1) THE NATIONAL UNION CASE involves a labor union's failure to comply with the provisions of the order actually appealed from, THE DISMISSAL ORDER giving rise to this petition involves a different order which remains subject to a separate appeal that is still pending and unresolved [see APPENDIX "A" at APP 1];

(2) THE NATIONAL UNION CASE does not involve "*a natural person*" who has rights to exemptions against execution under applicable provisions of state law [cf California Code of Civil Procedure § 703.020] which are non-waivable [California Code of Civil Procedure § 703.040] as in the present PETITION; and

(3) THE NATIONAL UNION case was decided before this Court's seminal decisions in Snidach v. Family Finance Corp., 395 U.S. 337, 89 S.Ct. 1820 (1969) and Goldberg v. Kelly, 397 U.S. 254 90 S.Ct. 1011 (1970)] which recognize significant procedural rights which PETITIONER was denied in the process leading to the dismissal of his appeal by both THE CALIFORNIA FAMILY LAW COURT and THE CALIFORNIA COURT OF APPEAL.

The distinction between judgments against entities and individuals under the equal protection arguments in this petition is particularly significant in view of rights granted to individual judgment creditors under California Code of Civil Procedure § 703.020 (b) and this Court's seminal decisions in Snidach v. Family Finance Corp., 395 U.S. 337, 89 S.Ct. 1820 (1969) and Goldberg v. Kelly, 397 U.S. 254 90 S.Ct. 1011 (1970)].

The decisions in Snidach v. Family Finance Corp., Goldberg v. Kelly, and the line of cases which have followed recognize individual rights under section one of the Fourteenth Amendment which do not extended to institutional defendants.

Based upon the foregoing THE CALIFORNIA COURT OF APPEAL'S dismissal of a fully perfected appeal by PETITIONER based solely upon his failure to satisfy a money judgment [whether entered in a family law court or anywhere else] raises a substantial issue under section one of the Fourteenth Amendment to the Constitution of the United States of America.

PETITIONER'S LEGAL ARGUMENT

INTRODUCTION

The principal issue raised by this petition does not involve the question of whether the State of California, or any other state has an obligation under section one of the Fourteenth Amendment to the Constitution of the United States of America to grant a "*natural person*" who appear in its family law courts the right to appeal or to have money judgments enforced in a certain way. The principal issue raised by this petition is whether after a state's legislature has conferred rights upon "*natural person's*" [and declared that their denial is a violation of "public policy"] can they be taken away or ignored by the state's judiciary without violating a "*natural person's*" equal protection rights under section one of the Fourteenth Amendment to the Constitution of the United States which prohibits a state from depriving any person's right to:

> **. . . life, liberty, or property, without due process of law; *nor deny to any person within its jurisdiction the equal protection of the laws.* [emphasis added]**

Although there are reported cases in which a defaulting spouse has been denied appellate rights in family law cases, there appear to be no reported cases in which the defaulting spouse who has raised a defense based upon his or her right to protection against the enforcement of a "money judgment" under a "non-waivable" provision of state law. There also appear to be no cases involving a defaulting spouse who claims his inability to perform is based upon a lack of non exempt assets [cf Goodridge v. Goodridge, 591 S.W.2d 571, 572 (Tex.Civ.App. 1979)].

I.

A STATE APPELLATE COURT CANNOT ENFORCE THE TERMS OF AN ORDER DIRECTING AN APPELLANT WHO IS "*A NATURAL PERSON*" TO PAY MONEY TO HIS OR HER ADVERSARY WITHOUT COMPLYING WITH THE PROVISIONS OF STATE LAW APPLICABLE TO THE ENFORCEMENT OF ALL MONEY JUDGMENTS AGAINST ALL "NATURAL PERSONS"

Under California law [applicable to all money judgments enforceable against "*natural persons*"] an order or judgment directing the payment of money is subject to the limitations contained in the state's Enforcement of Judgments Act [California Code of Civil Procedure §§ 680.010 through 724.260 inclusive] which protects certain assets of individual judgment debtors against liquidation [California Code of Civil Procedure § 703.020 (a)][6].

To emphasize the importance of the exemptions created for the benefit of "*natural persons*" the California

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6. The Constitutional issue [which the bench officer in the December 7, 2000 hearing leading up to the entry of THE DECEMBER FEE ORDER indicated a lack of interest in] was first raised during the course of the December 7, 2000 hearing [see APPENDIX "K" page APP-52 through page 56 inclusive. PETITIONER also raised his equal protection rights under the Fourteenth Amendment to the Constitution of the United States of America in ¶¶ 30 and 31 of his response to THE STAY ORDER [APPENDIX "P" at page APP 83 through 84 inclusive, APP 231 through APP 232 INCLUSIVE] and issue (b) through (d) of his PETITION FOR REVIEW [APPENDIX "Q" at pages APP-91 through APP-92]

Legislature enacted California Code of Civil Procedure § 695.040 which provides:

> ***Property that is not subject to enforcement of a money judgment may not*** **be levied upon or** ***in any other manner applied to the satisfaction of a money judgment.*** **[emphasis added]**

The restrictions imposed upon the enforcement of money judgments against the assets of individual judgment debtors under California law includes money judgments entered in the state's family law courts. [see California Code of Civil Procedure § 703.070 (a).

Because California's legislature has determined that a *"natural person"* has certain non-waivable rights under California's Enforcement of Judgments Law [California Code of Civil Procedure §§ 680.010 through 724.260 inclusive] based upon what it refers to as important issue of "public policy" as set forth in California Code of Civil Procedure § 703.0740 which provides as follows:

> ***A purported or contractual or other prior waiver of the exemption provided by this chapter or by any other statute,*** **other than a waiver by failure to claim an exemption required to be claimed or made at the time enforcement is sought,** ***is against public policy and void.*** **[emphasis added]**

As a result of the statutory scheme set forth above the denial of the statutory rights referred to herein to PETITIONER by THE CALIFORNIA COURT OF APPEAL through the entry of THE DISMISSAL ORDER based solely upon a default in the payment of an order directing the payment of money results in a clear violation of his rights under the Equal Protection clause found in section one of the Fourteenth Amendment to the Constitution of the United States of

America. It is the existence of those important non-waivable statutory rights which creates an issue of first impression for this Court and distinguishes the facts in this PETITION from the facts examined by this Court in THE NATIONAL UNION CASE.

A review of the record of the proceedings leading up to this PETITION establish that PETITIONER raised his federally protected due process and equal protection concerns at each stage of the proceeding leading up to the dismissal of his perfected appeal and the denial of review by the California Supreme Court [see APPENDIX "J" at APP. 26 through 29 inclusive AND APP 34 through APP 28 inclusive, APPENDIX "K" at APP 54 through APP 56 inclusive, APPENDIX "N" at APP 71, APPENDIX "P" at APP 74 through 75 inclusive, ¶¶ 10 through 31 inclusive of APPENDIX "P" at APP 78 through APP 84 inclusive and ¶¶ (c) and (d) of APPENDIX "Q" at APP 92 through APP 93 inclusive].

II.

A STATE APPELLATE COURT CANNOT DENY AN APPELLANT WHO HAS FULLY COMPLIED WITH ALL OF THE PUBLISHED PROVISIONS OF STATE LAW WHICH PRESCRIBE THE MANNER IN WHICH AN APPEAL MAY BE TAKEN,THE BENEFITS OF APPELLATE REVIEW BASED SOLELY UPON HIS OR HER FAILURE TO SATISFY AN ORDER DIRECTING HIM TO PAY MONEY TO HIS ADVERSARY OR HIS ADVERSARY'S ATTORNEY

Because the legislature of the State of California has declared [through the enactment of Code of Civil Procedure § 902] that anyone aggrieved by a judgment or order described in Code of Civil Procedure § 904.1 (a) has a right to an appeal, and under Government Code § 68926 provided that upon the payment of a two-hundred and fifty dollar ($250.00) fee receive "all services, through the rendering of the judgment or the issuing of the remittitur"neither a California Trial or Appellate Court has the right to deny either PETITIONER or anyone else the full benefits of such an appeal, simply as a means of bypassing the protections afforded to non-appealing judgment debtors under the "non-waivable" provisions of California's Enforcement of Judgments Act [Code Civil Procedure § 703.040].

Unlike the facts leading up to the dismissal of the appeal in THE NATIONAL UNION CASE supra, the issue on this PETITION is not a matter of whether PETITIONER should have satisfied the underlying order appealed from as a precondition to pursuing his appeal [which he was not required to do under California law (see 9 Witkin CALIFORNIA CIVIL PROCEDURE 312 Appeal § 265 (4th Edition 1997))], but whether upon satisfying all of the statutory

requirements [including the provision in California Government Code § 68926 which provided that the statutory filing fee covered " all services, through the rendering of the judgment or the issuing of the remittitur"] the state's judiciary could refuse to provide "all services" because of his failure to satisfy a separate order issued by the trial court.

Once again, while the Court may have observed in THE NATIONAL UNION CASE that courts have certain inherent authority to protect their process, where a state's legislature has adopted well defined procedures for benefit of all litigants, the state's judiciary cannot deny those benefits to a litigant who has strictly complied with their terms, without violating the equal protection provision of section one of the Fourteenth Amendment to the Constitution of the United States of America.

III.

A STATE COURT CANNOT DENY A LITIGANT THE BENEFIT OF A DEFENSE BASED UPON A AN INABILITY TO PRODUCE DOCUMENTARY EVIDENCE WHICH THE LITIGANT HAD A RIGHT TO DISPOSE OF PRIOR TO THE COMMENCEMENT OF THE PROCEEDING BECAUSE OF THE PASSAGE OF TIME

The underlying appeal, which the CALIFORNIA COURT OF APPEAL dismissed on February 21, 2001 without deciding, arises out of an application for relief filed by RESPONDENT PATRICIA KAY ZAMOS on March 23, 2000 [APPENDIX "H" APP. 17] almost eight (8) years after PETITIONER had made what he believed was his last payment under the provisions of THE 1982 DISSOLUTION DECREE [see ¶¶ 28 through 29 at page APP 20 of APPENDIX "I'].

As set forth at APP 4 of THE JUNE 2000 ENFORCEMENT ORDER APPENDIX "B" PETITIONER'S defense to RESPONDENT'S March 23, 2000 application was:

> **. . . [H]e has met those obligations, but his records were destroyed in the Northridge earthquake[7].**

PETITIONER'S defense was based upon the following sworn statement which is set forth in ¶ 27 at APP 19 of APPENDIX "I":

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7. This Court should be able to take judicial notice under Rule 201(b) of the Federal Rules of Evidence of the magnitude and destructive force of the 1994 Northridge earthquake within the area in which PETITIONER'S office (zip code 91367) and home (zip code 91364) are located.

> **[M]uch of the documentation which evidences [PETITIONER and his current wife's] financial contribution to the support of both RESPONDENT and [their daughters] has been lost, destroyed in the 1994 [Northridge] earthquake or simply disposed of in 1998 . . .**

Despite the undisputed fact that both PETITIONER'S home and office were in fact located within the area affected by 1994 Northridge earthquake, PETITIONER'S defense was rejected by THE CALIFORNIA FAMILY LAW COURT located two hundred [200] miles to the south in San Diego because the Court observed at APPENDIX "B" APP 6:

> **It is not believable that PETITIONER, an attorney, took no court action, got no receipts, prepared no duplicate documents, cannot find check records, nothing. All PETITIONER asks is trust him . . .**

THE CALIFORNIA FAMILY LAW COURT'S observations were made without any explanation of what legal requirements obligated PETITIONER to maintain such records for eight (8) years and what legal proceedings PETITIONER [who believed he had satisfied his obligations to RESPONDENT] was expected to bring [cf Snidach v. Family Finance Corp., 395 U.S. 337, 89 S.Ct. 1820 (1969) and Goldberg v. Kelly, 397 U.S. 254 90 S.Ct. 1011 (1970)]. What PETITIONER was asking THE CALIFORNIA FAMILY LAW COURT for in response to RESPONDENT'S delayed filing was, however, not trust but due process and a fair opportunity to defend himself. Instead, despite the lack of any legal requirement which required PETITIONER to maintain records relating to his failed marriage indefinitely or to commence any legal proceedings to prove his

performance he was punished through the arbitrary imposition of a liability of over one hundred and forty thousand dollars [$140,000.00+]

Although there appear to be few , if any cases dealing with the precise issue present [making it again a case of first impression suitable for review under Rule 10(c) of the Rules for the Supreme Court of the United States of America] in the context of this petition, the concept is fairly straightforward and illustrated by the observation by the District Court in Ashcraft v. Shenango Furnace Co. 56 F.Supp.2d 895 (N.D.Ohio 1999) in footnote 8 at 56 F.Supp.2d. 902:

> **The Court does not see, and plaintiff does not address, how defendants may be held liable for failing to produce information they were not required to keep.**

In a similar, but more direct discussion of the record destruction issue an Illinois Court in Estate of Adolph Fantozzi v. Lake View Trust and Savings Bank 183 Ill.App.3d 732, 736-737, 539 N.E.2d 340, 343-344 (Ill.App. 1988) held that where a claim was made against a bank on an obligation it had to a depositor after the bank was legally entitled to destroy its records the institution could rely upon a presumption that the obligation had been discharged prior to the legal destruction of the records of its performance.

There is in fact no legal basis for requiring PETITIONER or anyone else to maintain records relating to a failed marriage for a period of eight (8) years after he or she comes to the conclusion an obligation has been satisfied and discharged, particularly when the person to whom the alleged obligation is owed [knowing where the other party may be found] remains moot. At a minimum, while no court

seems to have ever addressed the question before, in the absence of some evidence that a former spouse has somehow secreted his or herself, an eight (8) year delay in processing a monetary claim is [as a matter of law] a violation of the due process requirements of section one of the Fourteenth Amendment to the Constitution of the United States of America.

CONCLUSION

Because California law provides "*natural persons*" both the right to appeal from the adverse decisions entered in the state's family law courts and the right to assert the benefits of the "non-waivable" provisions of the state's Enforcement of Judgments Act, The CALIFORNIA COURT OF APPEAL'S dismissal of PETITIONER'S perfected appeal from a judgment [based upon proceedings commenced years after PETITIONER was legally entitled to destroy the records needed to defend himself] based solely upon his inability to respond to a money judgment violated section one of the Fourteenth Amendment were violated.

Because the issues relating to a "*natural person's*" right to assert his right to protection under a state's exemption laws before his or her appeal is dismissed in response to a default under "a money judgment" is an of one of first impression under section one of the Fourteenth Amendment to the Constitution of the United States of America they warrant the issuance of certiorari pursuant to Rule 10(c) of the Rules of the Supreme Court of the United States of America.

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